



**Office of
Environment
& Heritage**

Your ref : MP 09_0019
Our ref : FIL09/4924, DOC11/34697
Contact : Biodiversity - Adrian Deville 66402583
Floodplain Mgt - Richard Hagley 66270206
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Ms Heather Warton
Director, Metropolitan & Regional Projects North
NSW Department of Planning & Infrastructure
GPO Box 39
SYDNEY, NSW 2001



Att: Mr Tom FitzGerald

2 SEP 2011

Dear Mr FitzGerald

RE: Environmental Assessment Exhibition: Major Project 09_0019 – Riverside Tourist Cabins, New Entrance Road, South West Rocks

I refer to documents relating to the above proposal received by the Office of Environment and Heritage on 29 July 2011.

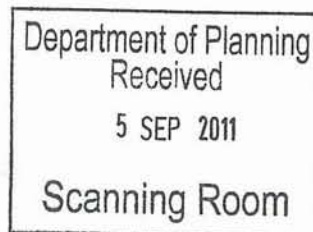
OEH has reviewed the information provided and has determined that it is able to support the proposal, subject to the Department of Planning and Infrastructure (DoPI) seeking the amendments to the draft Statement of Commitments, identified in Attachment 1. Attachment 2 contains OEH's assessment of the proposal, including justification for the amendments. Note that these amendments relate primarily to the protection of known and potential Aboriginal cultural heritage.

It is expected that OEH will be given an opportunity to review the draft Director-General's Environmental Assessment Report for this proposal. If the amendments to the draft Statement of Commitments are not included to the satisfaction of OEH, we recommend that they are included as Conditions of Approval, if approval is recommended by DoPI. It should be noted that these amendments are important for OEH's ongoing support of the proposal.

Should your department be in possession of any further information of interest to OEH associated with the proposed development, please contact Adrian Deville on (02) 6640 2583.

Yours sincerely

JON KEATS
Head, Biodiversity Management Unit, North Coast
Environment Protection and Regulation
Office of Environment and Heritage
Department of Premier and Cabinet



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ATTACHMENT 1 - RECOMMENDED STATEMENTS OF COMMITMENT/CONDITIONS OF APPROVAL

OEH recommends that the Department of Planning and Infrastructure seek the following additional statements of commitment from the proponents, or apply the following as conditions of approval as appropriate, before the proposal is approved.

RECOMMENDED CONDITIONS OF APPROVAL FOR BIODIVERSITY CONSERVATION

Prohibition of domestic animals in the proposed wetland management plan should be extended to the operation of the cabins.

RECOMMENDED CONDITIONS OF APPROVAL FOR ABORIGINAL CULTURAL HERITAGE

1. The proponent must continue to consult with and involve all the registered local Aboriginal representatives for the project, in the ongoing management of the Aboriginal cultural heritage values. Evidence of this consultation must be collated and provided to the consent authority upon request.
2. The proponent is to provide fair and reasonable opportunities for the registered Aboriginal stakeholders to monitor any initial ground disturbance works associated with project. In the event that additional Aboriginal objects are uncovered during the monitoring program, the objects are to be recorded and managed in accordance with the requirements of sections 85A and 89A of the *National Parks and Wildlife Act 1974*.
3. In the event that surface disturbance identifies a new Aboriginal object, all works must halt in the immediate area to prevent any further impacts to the object(s). A suitably qualified archaeologist and the registered Aboriginal representatives must be contacted to determine the significance of the object(s). The site is to be registered in the Aboriginal Heritage Information Management System (AHIMS) (managed by OEH) and the management outcome for the site included in the information provided to the AHIMS. The proponent will consult with the Aboriginal community representatives the archaeologist and OEH to develop and implement management strategies for all objects/sites.
4. If human remains are located in the event that surface disturbance occurs, all works must halt in the immediate area to prevent any further impacts to the remains. The NSW Police are contacted immediately. No action is to be undertaken until police provide written notification to the proponent. If the skeletal remains are identified as Aboriginal, the proponent must contact OEH's Enviroline on 131555 and representatives of the local Aboriginal community. No works are to continue until OEH provide written notification to the proponent.
5. All reasonable efforts must be made to avoid impacts to Aboriginal cultural heritage at all stages of the development works. If impacts are unavoidable, mitigation measures are to be negotiated with the local Aboriginal community and OEH. All sites impacted must have an OEH Aboriginal Site Impact Recording (ASIR) form completed and be submitted to OEH's AHIMS Registrar within 3 months of completion of these works.
6. An Aboriginal Cultural Education Program must be developed for the induction of all personnel and contractors involved in the construction activities on site. Records are to be kept of which staff/contractors were inducted and when for the duration of the project. The program should be developed and implemented in collaboration with the local Aboriginal community.

ATTACHMENT 2 – OEH ASSESSMENT OF THE PROPOSAL

1. BIODIVERSITY IMPACT ASSESSMENT

OEH is generally supportive of the measures outlined in the project application and accompanying Statements of Commitment in respect of biodiversity conservation and management. In particular, the plan to restore saltmarsh/wetland areas is supported, provided that appropriate targets, benchmarks and reporting mechanisms are clearly in place to ensure that the project successfully achieves a naturally self-maintaining condition.

Relatedly, the intent to ensure that domestic animals are prohibited from the wetland management area (Appendix C, p31) is also supported, as this is considered to be critical for the conservation of estuarine/wetland dependent fauna. It is not clear however, from the documentation provided, whether this prohibition of domestic animals extends to the operation of the cabins. OEH recommends that such a prohibition of domestic animals be extended to the operation of the cabins.

2. COASTAL FLOODPLAIN IMPACT ASSESSMENT

Flooding

As the proposed development area is affected by flooding and/or has the potential to affect flood behaviour, it will need to be considered by the approval authority in accordance with the NSW Government's Flood Prone Land Policy (Policy) as set out in the Floodplain Development Manual, 2005 (Manual). That Policy outlines that primary responsibility for floodplain risk management rests with the relevant local government, in this case Kempsey Shire Council (KSC). The primary objective of the Policy is to reduce the impact of flooding and flood liability on individual owners and occupiers, and to reduce the private and public losses resulting from flooding, utilising ecologically positive methods wherever possible.

As the approval authority, DoPI has responsibility for flood risk management issues. Therefore in granting development consent for this proposal, OEH recommends it consider the following issues:

1. *The development control plans or policies of KSC in relation to the management of flood risk;*
2. *The best available flood information for the area from KSC;*
3. *KSC's requirements for flood investigations to support development, whether flood information is currently available or not;*
4. *The full range of flood events, up to and including the probable maximum flood (PMF);*

OEH notes that the flood assessment undertaken by WMA water (Appendix F) appears to satisfactorily address points 1-4.

5. *the flood hazard in the area (including the hydraulic hazard, flood readiness, flood warning time, rate of rise of floodwater, flood duration and type of development);*

It has been reported in WMA's flood assessment and flood emergency plan (Appendix F) that the site predominantly falls within a High Hazard flood category (Figure 4). However, after filling of the site to 1.9 m AHD a Low Hazard category during a 1 in 100 flood event is generally assigned to the site. However it appears that some part of the site is within a High Hazard category (the product of depth and velocity is greater than 1).

It should be noted that the flood warnings for Kempsey may be indicative only and flooding at the site is largely affected by ocean levels. The warnings issued by the Bureau of Meteorology may not be failsafe and the proposed "failsafe" evacuation plan may be flawed if timely communications are not received (failure to enquire or failure in telecommunications).

In WMA's flood assessment and flood emergency plan (Appendix F), section 5.2 indicates 24 hours flood warning is sufficient which should be reviewed by SES to satisfy their requirement.

6. *the flood hazard of the flood access and evacuation route;*

As noted earlier, part of the site would be High Hazard which may affect the proposed evacuation route. It should be noted that if the site is evacuated as planned, then evacuation would be complete prior these hazard conditions being realised.

7. *the implications of climate change in estimating flood planning levels;*

The potential impact of climate change and sea level rise has been addressed at section 4.1 of WMA's flood assessment and flood emergency plan (Appendix F), consistent with the NSW Government's Sea Level Rise Policy Statement, 2009.

8. *evacuation route*

It appears from WMA water flood study report section 5.3 that there is no detailed evacuation route map/plan for this site. A detailed evacuation route plan should be prepared and then reviewed by SES to satisfy their requirements for evacuation.

9. *the impact of flooding on the proposed development*

WMA's flood assessment and flood emergency plan (Appendix F) section 6.1 recommends a habitable floor level of 3.25 m AHD (0.5m above the 2050 1% AEP flood). However, there is no consideration of flood proofing of the structure below that level.

10. *the impact of the development on flood behaviour including any management measures to mitigate adverse flood impacts*

It would appear from the WMA water flood study report that the impact of filling of this site has been adequately addressed.

11. *the impact of flooding on the safety of people/users of the development*

This has been discussed in the proposal. It is reliant on implementation of a failsafe evacuation plan.

Estuary Management

Estuary, wetland, acid sulphate soils and stormwater issues are considered to have been adequately addressed in the environmental assessment report. As per comments above regarding biodiversity conservation, the restoration of the wetland/saltmarsh area backing the site is considered a significant environmental attribute for Back Creek estuary.

3. ABORIGINAL CULTURAL HERITAGE ASSESSMENT

Aboriginal Cultural Heritage Assessment

A review of the documentation, including Sections 6.9 of the EA (March 2011) and Appendix K entitled: '*Archaeological Report on South West Rocks (Riverside Cabins) for Geolink, Coffs Harbour and Stephen McEnvoy (Developer)*' (dated November 2009), was undertaken to assess the potential impacts of the projects on Aboriginal cultural heritage in accordance with OEH's Aboriginal cultural heritage assessment guidelines and the requirements of Part 6 of the *National Parks and Wildlife Act 1974* (NPW Act).

Management of potential impacts on Aboriginal cultural heritage

OEH notes that a large portion of the project area is heavily vegetated and provided limited visibility during field surveying. OEH also acknowledges that the project area contains landforms which have yielded a significant volume of evidence of Aboriginal occupation in the immediate local area, e.g. creek lines and slopes. This evidence includes artefact scatters and middens. Accordingly, there is a likelihood of finding further evidence of Aboriginal occupation of the project area if the development proceeds. Any disturbance to an Aboriginal object, regardless of how minor the disturbance is, impacts or harms an object.

OEH therefore strongly recommends that the proponent provides an opportunity for the registered local Aboriginal stakeholders to monitor the initial ground disturbance activities (i.e. the removal of the vegetation cover and top soil) associated with proposed development to determine whether this activity reveals any currently undetected Aboriginal objects in the project area. It is noted that the consultant archaeologist also supports this view.

If new Aboriginal object(s) are uncovered due to the development and/or recommended monitoring activities, the object(s) identified must be recorded and registered with OEH as part of the assessment process in accordance with the requirements of Section 89A of the NPW Act. The management of any new sites or existing sites impacted by the development should be included in the information provided to OEH. This includes completing an Aboriginal Site Impact Recording Form, for all sites which are partially or wholly impacted by the works following approval. Please also note that penalties now apply to corporations for failing to fulfil these requirements.

OEH has included below recommended conditions of approval to target these matters.

Legislative Requirements

OEH reminds the proponent that the importance of protecting Aboriginal cultural heritage is reflected in the provisions of the NPW Act. The NPW Act has been amended recently and the proponent is also reminded to ensure they are familiar with the new requirements as they relate to the development and any subsequent assessment processes. Further advice regarding Aboriginal cultural heritage can be found on OEH's web-site at: <http://www.environment.nsw.gov.au/cultureandheritage.htm>.

Conclusion

Other than the inclusion of the recommended conditions of approval for Aboriginal cultural heritage in Attachment 1 (above), OEH has no additional concerns with the Aboriginal cultural heritage assessment for the project application.